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Judge: The Honorable Timonthy W. Dore
Chapter 13
Location: Seattle
Hearing Date: July 17, 2024
Hearing Time: 9:30am

IN THE U.S. BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

KALAMA TAKAI

Debtors.

Case No.: 24-11050-TWD

LANGE FAMILY PROPERTY TRUST'S
REPLY IN SUPPORT OF MOTION FOR
RELIEF FROM STAY AND CERTIFICATE
OF SERVICE THEREOF

COMES NOW, Lange Family Property Trust (the “**Trust**”) submits this reply in support of its Motion for Relief from Stay, *Dkt 28* “**Motion**”) to address issues raised in the Debtor’s Response to Motion for Relief from Automatic Stay, *Dkt 35* (“**Debtor Response**”), and the Declaration of Codebtor Sani Fonua in Response to Motion for Relief from Stay by Lange Family Property Trust (“**Fonua Response**”), *Dkt. 36* (together collectively the “**Responses**”).

I. INTRODUCTION

The Trust filed its Motion on June 27, 2024. Debtor filed a Response to the Trust’s Motion on July 9, 2024. The property subject to the Motion is the Trust’s security interest in real property pledged by Kalama Takai (“**Debtor**”) and Sani Fonua (“**Fonua**”) commonly known as 2308 S.

REPLY IN SUPPORT OF MOTION
FOR RELIEF FROM STAY – 1

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1 136th St. Seatac, WA, 98168 (“**Non-Profit Property**”) and 8426 S. 134th St. Seattle, WA 98178
2 (“**Residence**”) (collectively with the Non-Profit Property the “**Properties**” and each a “Property”),
3 legally described in the Deed of Trust attached to the Trust’s filed claim (“**Claim 3**”). The Trust
4 has cause for relief because the insurance certificate provided by the Debtor for the Non-Profit
5 property is deficient because (1) it is not in an amount sufficient to comply with the requirements
6 of the DOT¹; (2) the insurance certificate does not list the Trust as an additional insured, as required
7 by the DOT; and (3) the insurance certificate appears to have been procured based on a
8 representation the Non-Profit Property is Debtor’s primary residence despite the Debtor listing the
9 Residence as his primary residence in his petition. Because the insurance provided by the Debtor
10 is insufficient to adequately protect the Trust relief from the Automatic Stay is appropriate, and
11 the Motion should be Granted.
12

13 **II. REPLY**

14 a. *The Trust remains unprotected because the Insurance that Debtor provided is deficient.*
15

16 In the Response, the Debtor provided a Certificate of Insurance (“**Certificate**”) for the
17 Non-Profit Property, *ECF, 35-1*, however, this insurance is deficient in three regards.

18 First, the amount of coverage is not sufficient. The DOT requires insurance for the full
19 amount of the amount due under the Note. *Claim 3* at 9. The amount of coverage indicated in the
20 Certificate to protect the Trust’s interest is \$220,000.00 (\$200,00 for the “Dwelling” and \$20,000
21 for “Other Structures”). *Certificate* at 2. The full amount of the debt as of the date of the bankruptcy
22 filing on April 30, 2024 was \$346,769.79. *Claim 3*. Though the Certificate provides coverage for
23 loss of personal property and other events, these amounts would not serve to protect the Trust’s
24
25

26 ¹ Capitalized terms shall have the same meaning ascribed to them in the Motion unless otherwise defined herein.

1 interest in the Non-Profit Property. The delta between the coverage in the Certificate and the
2 amount owed to the Trust leaves the Trust inadequately protected².

3 Second, the Certificate does not list the Trust as an additional Loss Payee, as required by
4 the DOT. *Claim 3* at 9. This leaves the Trust's interest inadequately protected because any
5 insurance check could be negotiated by the Debtor without the Trust's approval or even
6 notification. Any protection the insurance coverage evidenced by the Certificate is inadequate
7 because the Trust is not listed as a loss payee.

8 Finally, the insurance is insufficient because the Certificate of Insurance describes the Non-
9 Profit Property as the Debtor's primary residence. *Certificate* at 1. The Debtor's primary residence
10 is 8426 S. 134th St. Seattle, WA 98178, as listed in his Voluntary Petition. *Dkt 1* at 2. This is
11 confirmed in the Fanua Response through the detailed recitation of the use of the Non-Profit-
12 Property. *See generally Fanua Response*. A misrepresentation regarding the use of the Non-Profit
13 Property could be a basis for denial of any claim made for a casualty event. This risk of loss without
14 insurance coverage is another reason the insurance evidenced by the Certificate leaves the Trust's
15 interest inadequately protected.
16
17

18 Based on the foregoing reasons, the foregoing reasons, the Motion should be granted
19 because pursuant to §362(d)(1) due to the lack of adequate protection of the Trust's interest in the
20 Properties.

21 b. Undersigned Counsel for the Trust has returned the undeposited Check to Debtor's Counsel.

22 The Response indicates there was payment that was sent to the Trust that has not been
23 credited in the payment history included with the Lange Dec. filed at *Dkt. 29*. This issue has been
24

25
26 ² If the other two issues with the Certificate are sufficiently resolved, the Trust would consider the coverage Debtor
has obtained sufficient protection.

1 addressed as undersigned Counsel's office mailed to Debtor's counsel the undeposited check on
2 July 8, 2024. However, the Trust has concerns regarding the Debtor's ability to both provide the
3 necessary payments to the Trust and to maintain the insurance required by the DOT.

4 III. PRAYER FOR RELIEF

5 For the foregoing reasons, and the reasons identified in the Motion, the Trust is entitled to
6 relief from the Automatic Stay so that the Trust may move forward with allowing it to proceed
7 with any and all state remedies incident to its security interest in the Properties as stated in the
8 Proposed Order filed with the Trust's Motion. Furthermore, the Trust has established cause
9 entitling it to a waiver of the 14-day stay ordinarily applicable to orders granting relief from the
10 Automatic Stay.
11

12 Respectfully submitted July 11, 2024.

13 SCHWEET LINDE & ROSENBLUM, PLLC

14 /s/ Deena L. Reynolds

15 Michael M. Sperry, WSBA #43760

16 Deena L. Reynolds, WSBA #59684

17 Thomas S. Linde, WSBA # 14426

18 *Attorneys for Lange Family Property Trust*

19 CERTIFICATE OF SERVICE

20 The undersigned certifies under the penalty of perjury of the laws of the State of Washington that
21 on July 11, 2024 a true and correct copy of the forgoing document was filed electronically with
22 the Western District of Washington that will initiate e-service of the forgoing document to the
23 following:

24 Jesse A P Baker on behalf of Interested Party Courtesy NEF
25 ecfwawb@aldridgepite.com, JPB@ecf.inforuptcy.com; jbaker@aldridgepite.com

Joy Lee Barnhart on behalf of Interested Party Sani Fonua
ecf@joybarnhart.com

Tom S Hyde on behalf of Debtor Kalama Takai

REPLY IN SUPPORT OF MOTION
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2 United States Trustee
3 USTPRegion18.SE.ECF@usdoj.gov

4 Jason Wilson-Aguilar
5 courtmail@seattlech13.com

6 Dated this 11th day of July, 2024 at Bellevue, Washington

7 /s/ Deena L. Reynolds
8 Deena L. Reynolds